

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

ARACELI PENA,	)	
	)	
Petitioner,	)	Case No. CV 10-2888 GW(AJW)
	)	
v.	)	
	)	
TINA HORNBECK, Warden,	)	MEMORANDUM AND ORDER
	)	DISMISSING PETITION
Respondent.	)	
	)	

In 2002, petitioner was convicted of murder with special circumstances, and was sentenced to state prison for a term of life without parole. In 2008, petitioner filed a habeas petition in this Court challenging that 2002 conviction. See Case No. CV 08-7369-AHS(JWJ). That petition was dismissed with prejudice on June 1, 2009, because it was not filed within the AEDPA's one year limitation period. Petitioner did not appeal from that judgment. On January 4, 2010, petitioner filed a second habeas petition challenging her 2002 conviction. That petition was dismissed as successive on January 11, 2010. Petitioner filed this third petition on March 31, 2010.

To the extent that petitioner again seeks to challenge her 2002 conviction and sentence, this petition successive. Because petitioner has not obtained authorization from the Ninth Circuit to file a


1 successive petition, this Court lacks jurisdiction to consider it.  
2 See 28 U.S.C. § 2244(b)(3)(A). ("Before a second or successive  
3 application permitted by this section is filed in the district court,  
4 the applicant shall move in the appropriate court of appeals for an  
5 order authorizing the district court to consider the application.");  
6 McNabb v. Yates, 576 F.3d 1028, 1030 (9th Cir. 2009) (holding that  
7 dismissal of a habeas petition for failure to comply with the statute  
8 of limitation renders subsequent petitions challenging the same  
9 conviction successive); see generally Felker v. Turpin, 518 U.S. 651,  
10 657 (1996); Cooper v. Calderon, 274 F.3d 1270, 1274 (9th Cir. 2001),  
11 cert. denied, 538 U.S. 984 (2003).<sup>1</sup>

12 To the extent that petitioner intended to file this document in  
13 the Ninth Circuit, but inadvertently mailed it to this Court, the  
14 following is the correct address for that court:

15 Office of the Clerk  
16 United States Court of Appeals for the Ninth Circuit  
17 95 Seventh Street  
San Francisco, CA 94103

18 The petition is dismissed without prejudice to petitioner's right  
19 to seek the necessary authorization from the Court of Appeals.

20  
21 Dated: April 23, 2010

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23 \_\_\_\_\_  
George H. Wu  
United States District Judge

24  
25  
26  
27 <sup>1</sup> To the extent that petitioner would like to try to show that  
28 she falls within one of the exceptions to dismissal of successive  
habeas petitions, 28 U.S.C. § 2244(b)(2)(B), she must first present  
any such argument to the Court of Appeals rather than to this Court.  
See 28 U.S.C. § 2244(b)(3)(A)&(C).